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In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1232

C. E. CARTER, ET AL,

Petitioners,

v.

HAMLIN HOSPITAL DISTRICT, ET AL,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

JOHN S. WATTS
Drawer O
Hamlin, Texas 79520

MIKE A. HATCHELL
P.O. Box 629
Tyler, Texas 75710

Attorneys for Respondents.

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To the Honorable Supreme Court of the United States:

Come now the Hamlin Hospital District, and its board of directors, as respondents, and respectfully file the following in opposition to the petition for writ of certiorari herein.

REJOINDER TO PETITIONERS' STATEMENT OF THE CASE

The "Statement of the Case", and other factual statements, in the petition are generally correct except that:

(1) It is inaccurate for petitioners to state that:

> " *** It is undisputed that Petitioners did not need or could not reasonably have expected to use the hospital facilities to be provided by the said Hospital District." (Petition 4.)

In their proof, petitioners demonstrated only that they customarily used hospital facilities outside the boundaries of the district. They did not prove a total lack of need for hospital services *per se*. In truth and in fact, the bill which created the Hamlin Hospital District does not limit the hospital facilities to be maintained or the services to be provided by the district to any particular locale or situs within the district, nor does it limit the number of hospitals or the kind of authorized services. It may be, therefore, that, pursuant to the general powers conferred by §§2, 10 and 20 of the Act creating it, the district will eventually establish hospital facilities which are vastly more convenient to petitioners or will instigate services and programs which petitioners could not obtain anywhere else. Petitioners' lack of need for, or use of, services to be provided by the district, thus, at least on *this* record, is hardly the foregone conclusion petitioners state it to be.

(2) It is equally inaccurate for petitioners to state, as a fact, that:

> " *** This long, snake-like district was arbitrarily created for the purpose of subjecting the property of Petitioners to taxation to build a hospital for other people. ***" (Petition 6.)

Not a whit of evidence was introduced to prove that petitioners were included in this hospital district only

for the purpose of subjecting their property to taxation for the district's support, and neither the jury nor the trial court made a finding to that effect. The quoted statement is, therefore, not a fact but merely a self-serving assertion on the petitioners part which is wholly unfounded in the evidence.

(3) Though of fleeting consequence, a final inaccuracy is found in petitioners' attempt, by the statement quoted below, to make it appear that creation of the district devolved, like a bolt from the blue, without petitioners having been afforded the opportunity of input into the legislative decision-making process:

> "Petitioners not only did not have any voice in the political manuevering in the passage of said legislative act, but also do not have any effective voice in the creation and operation of said hospital district. ***" (Petition 10.)

In actuality, as the testimony of petitioners' own witness reveals, a taxpayers association was formed within the area; it raised money and openly lobbeyed before the Texas legislature for the same position now espoused in this court. (See II S.F. 92-94.)

REASONS WHY THE PETITION SHOULD NOT BE GRANTED

I.

The inclusion of territory within the boundaries of a political subdivision, as a general rule, is not a proper subject for judicial scrutiny.

Simply stated, petitioners complain of the inclusion of their land within the confines of a lawful and duly created political subdivision.

The creation, implementation, and definition of the political subdivision of a sovereignty is deemed by the courts to be a political, as opposed to a judicial, matter which rests within the exclusive domain of the sovereignty's lawmaking authority. The most conspicuous judicial repository for this principle is oft-cited *Hunter v. City of Pittsburg*, 28 S. Ct. 40, 207 U.S. 161, 52 L. Ed. 151 (1907), which explains the philosophical basis for the principle in these terms:

> " *** Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. *** In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The

> power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it." (207 U.S. 178-9, 52 L. Ed. 159.)

The steadfastness with which this principle has been adhered to over the years is evidenced by this contemporary expression in *Gomillion v. Lightfoot*, 81 S. Ct. 125, 364 U.S. 339, 5 L. Ed. 2d 110 (1960):

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review." (364 U.S. 347, 5 L. Ed. 2d 117.)

A natural and logical concomitant to the *Hunter* doctrine, aposite to this case, is that the definition of a political subdivision's territorial limits, and the procedures whereby those limits are determined, are matters which concern state interest and are insulated from judicial regulation via constitutional challenge. Indeed, *Hunter* spoke to this very problem of definition of boundaries when it held:

> " *** Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. *** The state, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. ***" (207 U.S. 178-179, 52 L. Ed. 159.)

To the same effect, see: *Deane Hill Country Club, Inc. v. City of Knoxville*, 379 F. 2d 321, 324-325 (6th Cir. 1967), cert. den. 389 U.S. 975; *Detroit Edison Co. v. East China Township School Dist. No. 3*, 247 F. Supp.

296, 299-302 (D.C. Mich. 1965), aff'd 378 F. 2d 225, 229, cert. den. 389 U.S. 932; *International Harvester Co. v. Kansas City*, 308 F. 2d 35, 38 (10th Cir. 1962), cert. den. 371 U.S. 948; *Hammonds v. City of Corpus Christi*, 226 F. Supp. 456, 458-459 (D.C. Tex. 1964), aff'd 343 F. 2d 162, cert. den. 382 U.S. 837.

Inasmuch as the state action called into question here is the definition of the territory within a political subdivision, it is clearly within the ambit of those authorities and their prohibition against judicial review.

II.

An assessment of taxes disproportionate to the amount of benefits to be received from a political subdivision does not raise a substantial federal question.

It is true, of course, that state action loses protection of the political mantle when, and if, it is exercised in the creation and definition of political subdivisions for the express purpose of infringing a constitutionally protected right — as, for example, drawing municipal boundary lines for the avowed purpose of disenfranchising minority citizens, e.g., *Gomillion v. Lightfoot*, supra, 81 S. Ct. 125, 364 U.S. 339, 5 L. Ed. 2d 110 (1960). But, that is decidedly *not* the effect or purpose of the subdivision at hand, nor does petitioners' complaint raise an issue in that category.

As we understand petitioners' complaint, it is that the inclusion of their property within the bounds of the Hamlin Hospital District is unconstitutional, as to them, since the taxes they must bear to support the district will be disproportionate to their need for, or use of, hospital services to be provided by the district.

Disregarding for the moment whether that contention is supported by evidence, it seems to us a perfect

answer to the argument to say that correlation between taxes paid for the support of a political subdivision and benefits received therefrom has never been deemed a constitutional prerequisite to validity of such a subdivision. As to what a subdivision citizen may expect in return for his taxes, this court noted early on, in *Illinois Central Railroad Co. v. City of Decatur*, 13 S. Ct. 293, 147 U.S. 190, 37 L. Ed. 132 (1893), that:

> "*** *** The general levy of taxes is understood to exact contributions in return for the general benefits of government, and it promises nothing to the persons taxed beyond what may be anticipated from an administration of the laws for individual protection and the general public good. ***' ***" (147 U.S. 198-199, 37 L. Ed. 135.)

As a consequence, it is generally recognized that the failure of a political subdivision, created for the public good, to confer, either equally or substantially, upon its inhabitants benefits equivalent to taxes exacted for its support is not a constitutional issue either of due process or of equal protection. The reason for this is explained in *Union Refrigerator Transit Co. v. Kentucky*, 26 S. Ct. 36, 199 U.S. 194, 50 L. Ed. 150 (1905), in these terms:

> "But notwithstanding the rule of uniformity lying at the basis of every just system of taxation, there are doubtless many individual cases where the weight of a tax falls unequally upon the owners of the property taxed. This is almost unavoidable under every system of direct taxation. But the tax is not rendered illegal by such discrimination. Thus, every citizen is bound to pay his proportion of a school tax, though he have no children; of a police tax, though he have no buildings or personal property to be guarded; or of a road tax, though he never use the road. In other words, a general tax cannot be dissected to show that, as to certain constituent parts, the taxpayer receives no benefit. *** " (189 U.S. 204, 50 L. Ed. 153.)

See also: *Kelly v. Pittsburg*, 104 U.S. 78, 26 L. Ed. 658 (1881).

Petitioners' benefit disparity theory is, thus, one which has been raised before and has never found favor with this, or any other, court; it is, in short, an insufficient basis for challenging the constitutionality of the Hamlin Hospital District.

The decision in *Myles Salt Co. v. Board of Commissioners*, 36 S. Ct. 204, 239 U.S. 478, 60 L. Ed. 392 (1916) — which is the principal, if not the only, authority cited for petitioners' position — does not command a different rule or result. There, the political subdivision was not, as is the Hamlin Hospital District, created to provide for the general well-being of its inhabitants. Rather, it was created for the special purpose of benefiting lands within the subdivision, and particular lands at that. This court itself underlined that distinction by emphasizing in the opinion that:

> "It is to be remembered that a drainage district has the *special purpose* of the improvement of *particular property*. ***" (239 U.S. 485, 60 L. Ed. 396, emphasis added.)

Thus, while the *Myles* requirement, that a "*** special purpose ***" subdivision confer at least some benefit upon property it proposes to tax, may be said to constitute an exception to the *Hunter* doctrine, that is of little consequence to this case. The Hamlin Hospital District is not the kind of subdivision envisioned by the *Myles* exception. It is, instead, a district created in furtherance of the state's duty to provide for the *general* welfare of its citizens, and its purpose is not to benefit particular *property*, but to provide services for *people* on an indiscriminate basis. It is the latter type of political subdivision, of which the Hamlin

Hospital District is one, to which the *Hunter* doctrine applies with full force.* Petitioners' benefit theory has no more validity, then, when interposed against the kind of subdivision involved here than does the contention for example, that inclusion of land within corporate limits is unconstitutional because the landholder does not intend to use city services, or a contention that inclusion of land in a school district is unconstitutional because the owner has no school-aged children. Cf. *Kelly v. Pittsburg*, supra, at 104 U.S. 82, 26 L. Ed. 658; *Detroit Edison Co. v. East China Township School Dist. No. 3*, supra, at 303-304.

It is seen, therefore, that the principal philosophical underpinning of petitioners' case does not raise a viable constitutional issue.

III.

Even if it presented reviewable constitutional issues, petitioners' case is not supported by the facts.

Even if one were to assume what the foregoing cases so clearly establish to the contrary, i.e., that the constitution guarantees petitioners will receive substantial benefit from the hospital district in return for their taxes, we submit that they failed to prove the essential factual premise upon which their position rests.

Taken at face value, petitioners' evidence proves only that " *** a majority *** " (II S.F. 42, 75, 78, 80, 122,

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* Courts which have been called upon to interpret *Myles* from the same standpoint are in accord with this interpretation. See *Mobil Oil Corp. v. Local Boundary Commission*, 518 P. 2d 92, 101 (Alaska Sup. 1974); *State v. Texas City*, 157 Tex. 450, 303 S.W. 2d 780, 783 (1957), cert. den. 355 U.S. 603.

125, 159) of inhabitants residing below Highway No. 180, in the southern part of the district, traditionally use hospital facilities now located in towns outside the district. Little is said about the "quality" of hospital facilities in those other towns, and the extra distance in terms of miles between the homes of these southern inhabitants to facilities presently operated in the district and those they now use is comparatively slight, if they are not, in fact, closer in some instances. (See II S.F. 189-190, 205, 208, 219-220.)

The reason for the complainants' usage of outside facilities is, thus, the product of nothing more than long-standing custom or habit. Moreover, as mentioned already, there is nothing in the Act creating the Hamlin Hospital District which prevents the district from establishing hospital facilities which are more convenient in terms of access to these inhabitants and/or which will offer vastly greater services than they can obtain elsewhere in the vicinity. For that reason, petitioners are ill put to contend on *this* record, that they will *never* derive any benefit from the district. The likelihood that they will receive such benefit is certainly not disproved, and logic surely dictates a presumption to that effect.

Thus, if petitioners survive the insurmountable legal difficulties facing them, their position is not improved because, from a factual standpoint, they have failed to establish the main premise of their position.

CONCLUSION

For the reasons stated, therefore, it is submitted that the petition for writ of certiorari does not raise a substantial federal question and demonstrates no right to relief.

WHEREFORE, PREMISES CONSIDERED, respondents pray that the petition for writ of certiorari herein be denied.

Respectfully submitted,

JOHN S. WATTS
P. O. Drawer O
Hamlin, Texas 79520

By: John S. Watts

MIKE A. HATCHELL
P. O. Box 629
Tyler, Texas 75710

By: Mike A. Hatchell
Attorneys for respondents.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing brief in opposition has been served upon counsel for petitioners, Mr. James R. Black, and Mrs. Beverly Tarpley, P. O. Box 356, Abilene, Texas 79604, by placing the same in the United States Mail, properly addressed and postage prepaid on this the 24th day of March, 1977.

Mike A. Hatchell